TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 312.

WILLIAM E. HALL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 26, 1897.

(16,500.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the giving of judgment in a certain indictment which was in the said circuit court, before you, against William R. Hall for violation of section 5467 of the Revised Statutes of the United States, the punishment for which is imprisonment at hard labor for not less than one year nor more than five years, a manifest error hath happened, to the great damage of the said defendant, William R. Hall, as he complains, we, being willing that such error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 27th day of January, 1897, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to
2 correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

ADDISON BROWN.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 4 to 56, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of William R. Hall, plaintiff in error, *vs.* The United States of America, defendant in error, as the same remain of record and on file in said office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23rd day of February, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

JOHN A. SHIELDS, *Clerk.*

3 [Endorsed:] E. & A. B. 1471. The U. S. circuit court of appeals for the second circuit. William R. Hall, plaintiff in error, *vs.* The United States of America, defendant in error. Writ of error. Arthur C. Butts, attorney for plaintiff in error, 206 Broadway, N. Y. city. To John A. Shields, Esq., clerk U. S. cir. court: Copy of the within writ received this day. Dec. 29, 1896. Wallace Macfarlane, U. S. attorney. 145, pd. U. S. circuit court. Filed Dec. 29, 1896. John A. Shields, clerk.

4 TUESDAY, *October* 13*th*, 1896.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

The grand jury come into court and, being called, they severally answer to their names.

They present to the court an indictment in the following-named cause:

THE UNITED STATES *vs.* WILLIAM R. HALL. } Sec. 5467. Embezzling Letter and Stealing Contents of Same.

WEDNESDAY, *October* 14*th*, 1896.

The court meets pursuant to law and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES *vs.* WILLIAM R. HALL.

On motion of U. S. attorney, ordered arraignment.

The defendant on being arraigned pleads not guilty to the indictment against him.

5 TUESDAY, *October* 20*th*, 1896.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Addison Brown, judge.

THE UNITED STATES *vs.* WILLIAM R. HALL. } Sec. 5467.

On motion of U. S. attorney, ordered trial; defendant present

Jurors Sworn.

Richard T. Davies.
William A. Marble.
Alexander Cameron.
Albert Arnstein.
Charles Tatham.
Seth W. Johnson.
Cyrus L. Sulzberger.
Richard Butler.
E. Bancker Smedes.
Archibald A. Watson.
Alexander Guiteman.
James H. Duffie.

Mr. Jason Hinman, ass't U. S. attorney, opens cause in behalf of prosecution.

(Trial suspended to 21st inst. at 11 o'clock a. m.)

WEDNESDAY, *October* 21*st*, 1896.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Addison Brown, judge.

6 THE UNITED STATES
vs.
WILLIAM R. HALL.

The trial of the above cause being resumed this day pursuant to adjournment, the defendant present:

Evidence in Behalf of Prosecution.

Joseph E. Jacobs sworn.
Henry Baer, "
Jacob Weil, "

Mr. Arthur Butts, attorney for defendant, moves that the court direct jury to render a verdict of acquittal, and is heard in support thereof.

Motion denied, with leave to renew same on motion in arrest of judgment, should defendant be convicted.

Summing up of cause by defendant's attorney waived.

Mr. Jason Hinman, assistant U. S. attorney, sums up cause in behalf of prosecution.

Charge is thereupon given by the court to the jury, who retire in charge of an officer duly qualified to attend them, and on their return they say that they find the defendant guilty of the charges in the indictment contained, and so say they all.

Ordered that the prisoner be remanded for sentence.

Motion by def't's attorney for leave to make motion for new trial and in arrest of judgment granted.

7 TUESDAY, *November 24th*, 1896.

The court meets and is opened by proclamation.

Present: Hon. Addison Brown, judge.

THE UNITED STATES
vs.
WILLIAM R. HALL.

On motion of U. S. attorney, ordered sentence.

The court thereupon proceeds to pass judgment and sentence the prisoner, William R. Hall, to two (2) years' imprisonment at hard labor; sentence to be executed at Kings County penitentiary.

8 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the third Wednesday of June, in the year of our Lord one thousand eight hundred and ninety-six, and continued by adjournment to and including the thirteenth day of October, in the year of our Lord one thousand eight hundred and ninety-six.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid on their oath present that William R. Hall, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-six, at the southern district of New York and within the jurisdiction of this court, being then and there employed in a department of the postal service of the United States, to wit, as a clerk at Station F, a branch post-office of the United States in the said city of New York, did unlawfully and willfully secrete, embezzle, and destroy a certain letter directed and addressed in words and figures as follows, to wit:

9 "Mrs. SUSAN METCALF,
No. 346 E. 24th St.,
New York City, N. Y."

which said letter had been entrusted to the said William R. Hall, and had come into his possession in his capacity as such clerk and by virtue of his said office and employment, and was intended to be delivered by a letter-carrier, and the said letter then contained articles of value—that is to say, three silver certificates of the United States, each of the denomination and value of one dollar, and one United States Treasury note of the denomination and value of one dollar—against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

10 *Second Count.*

And the jurors aforesaid on their oath aforesaid do further present that William R. Hall, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-six, at the southern district of New York and within the jurisdiction of this court, being then and there employed in a department of the postal service of the United States, to wit, as a clerk at Station F, a branch post-office of the United States in the said city of New York, did unlawfully and willfully secrete, embezzle, and destroy a certain letter directed in words and figures of the tenor following—that is to say:

"Mrs. Susan Metcalf,
No. 346 *E. 24th St.*,
New York City, N. Y."

and the said letter was of the tenor following, to wit:

"Linwood, O., *Sept.* 7, 1896.

"My Dear Sue: I have had a hard time on the road since I last wrote you. Business seems to be horribly dull and I have made very few sales. I am of the opinion that after the election has been decided, one way or the other, that times will change for the better. You ask for $10.00 in your letter of the 6th, but I am only able to send you four ($4.00). Am in hopes that I can send you some more on Sunday. Take good care of yourself, and should P. J. call, give him my kindest regards. Hoping to see you about the 26th, believe me,

Lovingly yours, PAUL R. CLIFFORD."

11 "Address your next letter c. o. Burnett house, Cincinnati, O."

and the said letter had then been intrusted to the said William R. Hall, and had come into his possession by virtue of his said office and employment, and was intended to be delivered by a letter-carrier, and the same letter then contained articles of value—that is to say, a silver certificate of the United States of the denomination and value of one dollar, series of 1891, serial number E 59971991 ∈; also a certain other silver certificate of the same series and of like denomination and value, bearing serial number E 52045212 ∈; also a certain other silver certificate of the same series and of like denomination and value, bearing said serial number E 55220600 ∈; also a United States Treasury note of the series of 1891, of the denomination and value of one dollar, and bearing the said number B 29696568 ★, the said silver certificate and Treasury note being of the obligations and securities of the United States—against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

12 *Third Count.*

And the jurors aforesaid on their oath aforesaid do further present that William R. Hall, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-six, at the southern district of New York and within the jurisdiction of this court, being then and there employed in a department of the postal service of the United States, to wit, as a clerk at Station F, a branch post-office of the United States in the said city of New York, did unlawfully, willfully, and feloniously steal, take, and carry away a certain United States Treasury note of the denomination and value of one dollar and three several silver certificates of the United States, each of the denomination and value of one dollar, the said Treasury note and the said silver certificates then and there being the money and property of one Joseph E. Jacobs, and the same Treasury note and the same silver certificate- were then and there feloniously stolen and taken, as aforesaid, by the said William R. Hall from and out of a certain letter which then and there had come into his possession in his capacity as such clerk, as aforesaid, and by virtue of his said office and employment, and the said letter was directed in the tenor following—that is to say:

"Mrs. SUSAN METCALF,
No. 346 E. 24th St.,
New York City, N. Y."

and the same was then intended to be delivered by a letter-
13 carrier and had not then been delivered to the party to whom the same was directed, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

WALLACE MACFARLANE,
U. S. Attorney.

(Endorsed:) U. S. circuit court. The United States of America *vs.* William R. Hall. Indictment. Embezzling letter & stealing contents of the same. U. S. Rev. Stat., sec. 5467. Wallace Macfarlane, U. S. district attorney. A true bill. H. C. Fahnstock, foreman. Filed in open court the 13th Oct., 1896. Oct. 14, 1896, the defendant arraigned and indct. read. Def't pleads not guilty, with l., etc., for 19th. October 21, 1896, the defendant tried; verdict, guilty. James R. Angel, A. C. Butts, att'ys for def't. Motion in arrest of judgment and for new trial argued. Filed decision, Brown, J., denying motion. Nov. 24, 1896, sentenced to two (2) years imprisonment at hard labor. Sentence to be executed at Kings County p't'y and stay of ex'n granted for 20 days, etc. (See order on file.) Motion denied Nov. 11, '96. A. Brown. U. S. circuit court. Filed Oct. 13, 1896. John A. Shields, clerk.

14 United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
WILLIAM R. HALL. } Criminal Term.

Motion in Arrest of Judgment and for a New Trial.

Wallace Macfarlane, U. S. district attorney, and Jason Hinman, assistant U. S. att'y, for Government; James R. Angel and Arthur C. Butts, for defendant.

BROWN, *J.:*

A motion is made in arrest of judgment and for a new trial after a verdict of guilty found upon trial of the defendant on an indictment containing three counts, under section 5467 of the Revised Statutes, for embezzling a letter from the mail and stealing its contents.

The evidence showed that the Government detectives prepared a special-delivery letter, designed as a test or decoy letter, containing marked bills, and delivered it, bearing a special-delivery stamp, to the night clerk in charge of branch Station F of the post-office in this city. The defendant was not a letter-carrier, but a clerk employed at that office, whose duty it was to take charge of special-delivery letters, enter them in a book kept for that purpose, and then place them in course of transmission. The letter in question was addressed to Mrs. Susan Metcalf, a fictitious person, 346 E.
15 24th street, New York city, fictitious number. The letter was placed by the night clerk with other letters upon the table where such letters were usually placed, and the defendant, entering the office not long after, took this letter, along with the others on the same table, removed them to his desk, and properly entered the other letters, but did not enter this letter. On leaving the office not long after, the omission to enter the letter having been observed, he was arrested, and the money contents of the letter, marked and identified by the officers, were found upon his person. The officers testified upon cross-examination that the address was a fictitious one; that the letter was designed as a test letter, and that they "did not intend that the letter should be delivered to Mrs. Susan Metcalf or to that address," and that "it could not be delivered to that person at that address."

1. The first two counts of the indictment are under the first part of sec. 5467, and after describing the letter they aver that the letter had been entrusted to the defendant and had come into his possession in his capacity as clerk employed in the postal service and by virtue of his office and employment, and that the letter was intended to be delivered by a letter-carrier." The third count was based upon the last clause of sec. 5467, and averred that the defendant feloniously stole the contents of said letter (describing it), and that the letter "was intended to be delivered by a letter-carrier and had not been delivered to the party to whom the same was directed."

In neither of the counts is there any other averment with
16 regard to any intended conveyance of the letter by mail. At the close of the Government's case the counsel for the prisoner moved that a verdict of acquit-al be entered on the ground that the offence was not proved as laid in the indictment. The motion was denied, with leave to renew in case of a verdict of guilty, by motion in arrest of judgment, and new trial.

If it was essential for the Government to prove that the letter in question "was intended to be delivered by a letter-carrier" in order to entitle it to a conviction on one of the three counts, the motion should be granted, both because there was not sufficient evidence to support that averment and because the case was submitted to the jury without proper instructions on that subject, provided a finding of the jury on that point was material. There is certainly grave doubt upon the evidence whether the letter was in any event designed to leave Station F—that is, whether it was not intended to be intercepted before it left Station F or came into the hands of any letter-carrier, had it been properly entered by the defendant in the book of special deliveries. In the two counts under the first part of sec. 5467 it is necessary, as held in the Supreme Court in the case of U. S. *vs.* Goode, 159 U. S., 665, 668, to aver that the letter was intended (*a*) to be conveyed by mail or (*b*) carried or delivered by any mail-carrier, * * * letter-carrier, or other person, and so on, or (*c*) forwarded through or delivered from any post-office or branch post-office, &c. If some one of these circumstances be
17 necessary to be averred, then there must be either direct or circumstantial evidence from which the jury can find or rightly infer this intent, except in so far as the necessary evidence is supplied by the following section. Section 5468 declares that a deposit in the post-office or branch post-office is evidence that the letter was "intended to be conveyed by mail." It does not, however, declare that this shall be evidence that it was to be delivered by a letter-carrier or forwarded, &c. Evidently it could not do so, for thousands of letters are deposited for delivery to the persons addressed who have boxes rented to them in the same post-office building, in which cases there is no delivery by letter-carrier and no forwarding and none is intended. In all such cases there is, however, a "conveyance by mail," a condition sufficiently satisfied by any handling of a deposited letter by the postal authorities or any use of any part of the machinery of the post-office in putting the letter in course of transmission, though the letter may not go out of the building or out of the room in which it is deposited.

This indictment, however, is not framed upon the "conveying" clause of sec. 5467, but upon the averment that the letter was "intended to be delivered by a letter-carrier." As the Government chose this as one of the several necessary averments in the first two counts drawn upon the first part of sec. 5467, I think it is bound by the particular clause on which those indictments are drawn, and that the verdict cannot stand upon those counts.

2. The last clause of sec. 5467, upon which the third count
18 is framed, does not require either of the above-named averments. That clause declares that "any such person" (that

is, any such post-office employé) "who shall steal any of the things aforesaid" (that is, the contents) "out of any letter" (not any such letter), "package, bag, or mail of letters which have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed," shall be punishable, &c.

No doubt the letter referred to must be one intended to be "conveyed by mail" within the sense of those words as above defined (U. S. *vs.* Wight, 38 Fed., 106, 108), and such was the intent in this case, for the letter deposited was intended to come, as it did come, officially into the hands of the defendant and to be put in course of transmission according to its address. To that extent the evidence clearly goes, and no averments beyond that are necessary except such as the indictment contains. The averment of the third count that this letter was "intended to be delivered by a letter-carrier" is surplusage. Such an intent is not one of the ingredients or conditions of the statutory offense. It has no bearing on the defendant's acts, and it has no more connection with the offence described than any other private intention or private motive of the writer of the letter could have had. It seems to me, therefore, to be immaterial and surplusage. In some cases unnecessary averments in regard to the description of the article stolen have been held to
19 constitute a fatal variance when the proof contradicted the particulars averred, because the particular description was a part of the identity of the article. I do not think the averment in the present case can fairly be said to be of that character. In the case of Montgomery *vs.* The United States the indictments were very similar. In the third count the averment was that the letter was "to be conveyed by mail and to be delivered to the persons addressed." The proofs showed that it was the intention of the Government officers who deposited the letters to withdraw them from the mails in case they were not stolen before they reached the persons addressed. It was held that there was no variance, and the exception taken on the ground of a fatal variance was overruled. Whatever doubts might otherwise be entertained, I think that case requires me to overrule the present motion as respects the last count in this indictment, and as the transaction was a single transaction the third count is sufficient to sustain the verdict, and the motion is therefore overruled.

Dated New York, November 11, 1896.

A. B.

(Endorsed:) Circuit court of the United States for the southern district of New York. United States *vs.* William R. Hall. Opinion, Brown, J. U. S. circuit court. Filed Nov. 11, 1896. John A. Shields, clerk.

20 At a stated term of the U. S. circuit court of the United States for the southern district of New York, appointed exclusively for the transaction of criminal business, held in the U. S.

court-house, in the city of New York, on the 11th day of November, 1896.

Present: The Hon. Addison Brown, U. S. district judge.

THE UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.

The motions for a new trial and in arrest of judgment herein coming on to be heard, after hearing Arthur C. Butts, Esq., and James R. Angell, Esq., in favor of said motions, and Jason Hinman, Esq., assistant U. S. attorney, opposed, due deliberation being had, it is—

Ordered that the motions be, and they are hereby, denied as to the verdict on the third count, and that sentence be passed on the verdict on the third count.

Nov. 17th, 1896.

ADDISON BROWN.

(Endorsed:) U. S. circuit court, southern district of New York. United States *versus* Wm. R. Hall. Order denying motions, &c. Wallace Macfarlane, United States attorney, attorney for plaintiff. Filed in court Nov. 17, 1896.

21 At a stated term of the circuit court of the United States for the southern district of New York held at the United States *and* post-office building, in the city of New York, on the 24th day of November, 1896.

Present: Hon. Addison Brown, judge.

THE UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.

Upon all the proceedings had and on the annexed consent and the stipulation of the United States district attorney it is—

Ordered that the defendant's time to settle his bill of exceptions herein be extended twenty (20) days from the date of this order, said bill of exceptions to be entered *nunc pro tunc* as of November 24th, 1896.

ADDISON BROWN.

22 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.

It is hereby consented and stipulated that the defendant's time to settle his bill of exceptions herein be extended twenty days from

the date hereof, said bill of exceptions to be settled *nunc pro tunc* as of November 24th, 1896.

Dated November 24th, 1896.

WALLACE MACFARLANE, *U. S. Att'y.*

(Endorsed:) United States circuit court. William R. Hall, appellant, against United States of America, appellee. Consent and order to extend time filing bill of exceptions. Arthur C. Butts, attorney for appellant, 206 Broadway, New York city. Filed in court Nov. 24, 1896.

23 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
against
WILLIAM R. HALL.

Defendant's Bill of Exceptions.

The above-named defendant was indicted at a term of the United States circuit court for the southern district of New York in October, 1896, for a violation of section 5467 of the Revised Statutes of the United States.

The said indictment appears in full in the record hereof.

The defendant was arraigned on the 14th day of ——, 1896, and plead not guilty.

And afterwards, to wit, on the 20th day of November, 1896, the issue on said indictment on defendant's plea of not guilty came on to be tried before the Honorable Addison Brown, U. S. judge, and a jury.

The United States was represented by Jason Hinman, Esq., assistant United States district attorney, and William S. Ball, assistant United States attorney; and the defendant was represented by James R. Angel, attorney, and Arthur C. Butts, of counsel.

To maintain the issue upon the part of the United States the prosecution called several witnesses, who testified as follows:

24 JOSEPH E. JACOBS sworn and examined as a witness for the Government.

Direct examination by Mr. HINMAN:

I am a post-office inspector. I know the defendant Hall. He is a clerk in the Station F, at the branch post-office, New York city; regularly employed. I found him on duty in Station F. He was a clerk in the office. His duties were to keep count of special-delivery letters and the time book of carriers. Special-delivery letters passed through his hands and he made an account of them. He was arrested September 10th, 1896. On the evening of September 9th, 7.17 p. m., two special-delivery letters were prepared by Chief Clerk Dillon and myself. I knew the chief clerk, Mr. Dillon, of the inspector's office. One of the letters was addressed to Mrs. Susan

Metcalf, 346 East 24th street, New York city, New York, and contained four one-dollar bills; also a letter. The letter was prepared by Mr. Dillon. The envelope was addressed by Mr. Dillon. The letter was prepared in my presence. One other letter was prepared, and it was addressed to Miss Hulda Nansen, 442 East 35th street, New York. Both of these letters were test-letters, for the purpose of ascertaining whether letters were going astray through that station. At 20 minutes past four on the morning of the 10th of September I gave them to Mr. Baer in the presence of Mr. Dillon. We went to the station together and told him to put those letters with the other special-delivery letters that had come in. Station F is at
25 28th street and Third avenue. Baer took the letters, with ten or eleven other special-delivery letters in the bundle which he had there. After that, about 7 o'clock, before the defendant was arrested, we went up to Mr. Weil's house, 115th street. Weil is the chief clerk at Station F. We waited there until he came out—until 6.30. We waited opposite his house and came down the elevated railroad together and gave him a memorandum of the letters and told him to look out for them and see if they were entered by Mr. Hall. Special-delivery letters should be entered in a book. There is a general book for that purpose called the "special-delivery book." It is required that the special-delivery letters should be entered in the book known as the "special-delivery book" by defendant. After 6.30 I gave instructions to Mr. Weil. After we ascertained that this letter had not been entered, then we arrested Hall. We found him sitting on the railing in front of Station F at about twenty-five minutes after seven on the morning of September 10th. I asked him where he had been during his lunch hour or his breakfast hour. He said he had been at a liquor store on the corner of 29th street, and I brought him over there, and I requested the bartender to give me two one-dollar bills for the two-dollar bill that I had. He gave me a paper dollar and a silver dollar. I arrested Hall about 7.25 in the morning. I gave the letter to Mr. Baer at 4.20 o'clock in the presence of Mr. Dillon. The conversation that I am now detailing was in the presence of the defendant. Then Hall said he had been to another bar-
26 room. I think he said it was in Lexington or Fourth avenue. He wanted to know if I wanted to go there, and I said no. We took the Fourth Avenue car down to the post-office. We asked Mr. Hall to put out what money he had in his pocket. He took from his vest pocket $13—one five-dollar bill, one two-dollar bill, and six one-dollar bills. I asked him where he had received the one-dollar bill. He said that the day before at 1.30 he changed the five-dollar bill on the elevated-railroad station from the agent, 29th street and Third avenue, and that one dollar he had borrowed from his landlady the day before. I recognized some of those bills by marks we had put on the back of them. I have the bills here (producing them). These are the four one-dollar bills which I saw put in the letter prepared by Mr. Dillon, addressed to Mrs. Susan Metcalf. The mark is an ink dot in the figure one on the upper right-hand corner, back of each bill. These are the iden-

tical bills that were among the six bills that were taken from the defendant Hall's person. He took them out himself from his vest pocket, together with the other bills. They did not find the Metcalf letter anywhere. He turned out all of his pockets in room 109, 4th floor, of this building, in the office of the post-office inspector, but the letter did not appear. I did not make any search for it at Station F. I requested Mr. Weil, the chief clerk, to make a search for the letter and also search the record to see whether it had been entered as a special-delivery letter. That is all the inquiry I made.

The bills were offered and received in evidence and marked "Exhibits 1, 2, 3, and 4."

27 Cross-examination by Mr. BUTTS:

Hall was acting as clerk, having charge of special-delivery letters; that was one of his duties. In his absence I know generally that there was always some one there that entered the special-delivery letters. He was detailed specially for that one duty that day. No other person had charge of the special-delivery letters that morning. When Hall came to the office that morning we were up to 115th street waiting for Mr. Weil. Hall told me he reported for duty that morning at 5.20. At that time we were up in Harlem. Between 5.20 and 7.25 a. m., from what he stated to me, he had charge of the special-delivery letters. From my own knowledge, I do not know it. I only know that I asked him, and he stated that he had, but of my own knowledge I do not know it. That morning I gave two letters to Mr. Baer, the night clerk. I do not know what he did with them. Of my own knowledge, I do not know whether they ever went into the special-delivery bundle. This letter was one that was made up by Mr. Dillon in my presence, addressed to Mrs. Susan Metcalf. I did not know of any such person; did not know of any such address as 346 East 24th street, New York city, New York, of my own personal knowledge. I had no personal knowledge at that time that there was, in fact, no such address as 346 East 24th street. At the time I handed this letter to Weil I knew the name was fictitious, and that there was no such person as Mrs. Susan Metcalf living at the address No. 346 East 24th street. I knew that
28 that letter could not be delivered to that person at that address.

EDMOND M. DILLON sworn and examined as a witness on behalf of the Government.

Direct examination by Mr. HINMAN:

I am chief clerk in the office of the post-office inspector. I know the defendant Hall. On the evening of the 9th of September last I prepared a test-letter for deposit in Station F, branch post-office, New York city. It was addressed to Mrs. Susan Metcalf. I forget the balance of the address. I have a copy of the letter. I put into the envelope besides the letter four one-dollar bills. The letter was mailed. I kept their numbers. The exhibits you show me—1, 2,

3, and 4—are the bills I put in the letter. I kept a copy of that letter that I enclosed in the envelope addressed to Mrs. Susan Metcalf. This is the copy.

Mr. BUTTS: I object to a copy of this letter being given in evidence on the ground there is no foundation laid for the evidence.

Objection overruled. Exception by defendant.

"LINWOOD, O., *September 7th*, '96.

MY DEAR SUE: I have had a hard time on the road since I last wrote you. Business seems to be horribly dull, and I have made very few sales. I am of the opinion that after the election has been decided one way or the other the times will change for the better.

You ask for $10 in your letter of the 6th, but I am only able
29 to send you four. Am in hopes that I can send you some more on Sunday. Take good care of yourself, and should P. J. call give him my kindest regards. Hoping to see you by the 26th, believe me,

Lovingly yours, PAUL R. CLIFFORD."

In this letter I enclosed the four bills. On the morning of the 10th of September Mr. Jacobs had this letter in his possession. I took it after I had reported it. I saw him give it to Night Clerk Baer in Station F about 4.20 in the morning. I saw Baer put the two of them in with some other letters that were on this desk. I do not know the special-delivery desk. There were other special-delivery letters there, and he put the two with the others. These letters bore special-delivery stamps in addition to the ordinary two-cent stamps. I saw nothing else in connection with the letters. We went outside and went up to see the chief clerk—up at Harlem, I think, 115th street—with Mr. Jacobs. We waited until the chief clerk came out of his house, and Mr. Jacobs went over and had a talk with him, and we all went down in the elevated car together. The chief clerk I saw get off at 28th street, and we went down to 23rd street and got off there and walked slowly back. The next thing, I should think it was somewheres around seven o'clock, the chief clerk came out of Station F. I was across at the station—the downtown station side—and I saw him come out of the office on

the other side of 28th street. I informed Mr. Jacobs. I gave
30 him some information and went back into the elevated station downstairs. Mr. Jacobs walked into the saloon on that corner, and about five minutes afterwards the chief clerk came out again and he motioned to me—Hall coming out of the door. Hall started up the street with two other letter-carriers. I went inside to inform Mr. Jacobs in the saloon, and when we got out Hall had disappeared. We walked up the street, but could not find him, so we decided to wait about there until he came back. We stayed there, I guess, about twenty minutes, and he came round the corner from 28th street and walked up and sat on the rail in front of the station. Mr. Jacobs walked up to him and said something and he started downtown—no, he went across into the saloon on the corner and came down there and took a Fourth Avenue car. I heard con-

versation in the saloon in presence of the defendant, between Jacobs and the bar-keeper. Jacobs asked the bar-keeper to give him two one-dollar bills for two dollars. I heard Jacobs ask Hall before this where he had been, and he said he had been over in that saloon on the corner. I then went down Fourth avenue to the post-office, went upstairs in room 109, and Mr. Jacobs asked Hall questions. I saw Hall turn the bills out of his vest pocket; they were wrapped up with the other bills; among the bills he turned out were these four bills which I identified. The amount of money he turned out was $13—one was a five-dollar bill, one a two, and six ones. Hall said that he had the five-dollar bill and the two-dollar bill since last pay in August; that five of the one-dollar bills he got in exchange for a five-dollar bill the afternoon before at the
31 elevated station, 3rd avenue and 28th street. He said that other bill he had borrowed from his landlady that morning or the night before. Those bills were the property of Mr. Jacobs.

Cross-examination by Mr. BUTTS:

I did not know about any person by the name of Metcalf living at 324 East 24th street. The name was fictitious; as far as I know, there was no such person in existence; that is correct. Of my personal knowledge, I do not know that there was any such number as 346 East 24th street; of course, I did not intend that the letter should be delivered to Mrs. Susan Metcalf at that address.

HENRY BAER sworn and examined as a witness on behalf of the Government.

Direct examination by Mr. HINMAN:

I am a clerk in the post-office at Station F, 28th street and Third avenue, and was on the 9th and 10th of September last. I know the defendant Hall. He was a clerk there with me. I have been a clerk there about two years. Hall and I were working there together as clerks for two years. Hall had charge of the special-delivery letters. I saw Mr. Jacobs on the morning of the 10th of September. I was the night clerk there at that time. I saw Mr. Dillon there to-. At 4.20 they gave me two letters; I noticed them particularly; noticed the addresses on them. One was addressed to a person named Mansen, in East 35th street, and the other to Mrs. Susan Metcalf, in East 24th street; they were special-delivery
32 letters. I mixed these two letters with nine others on the special-delivery-letter clerk's desk. I mixed them up and put them on the special-delivery desk, where the special-delivery clerk was in the habit of getting the letters. I first saw Hall at 5.20 a. m. I saw him when he first came to the office at 5.20. He took that batch of letters from the desk in which these two letters were included. I did not see what he did with them.

Cross-examination by Mr. BUTTS:

Hall came there at 5.20. I went off at 7.15. These nine letters or the special-delivery letters were put on a desk. Hall had a desk

of his own. They were not put on Hall's desk. They were not put on Hall's desk because I have to watch them. I had charge of them until Hall came into the office. I had no particular desk. The desk where these letters were placed was about ten feet away from Hall's desk—in the same room. I did not hand the letters to Hall. Nobody else was in the office at the time. I was separating letters. Hall's desk was about four feet from where I was standing separating letters and about four feet from where the special-delivery letters were put by me. Hall's desk was further from me than the desk where I put the letters. Hall's desk was about six feet away from me and the other was four feet. The reason I placed the letters on the desk I did was because it was nearest to me. These desks were behind the window, where the post-office was separated from the general public—all barred off by partitions. I mean
33 to tell the court and jury that the reason I placed those letters on that desk was so that I could watch them. I had no other reason. I had been a clerk in the department four years; Hall about two years. I had been night clerk for fifteen days—from the 1st to the fifteenth of September. I had been night clerk about ten days when Hall was arrested. It had always been my custom instead of placing the special-delivery letters upon Hall's desk to place them on the desk I did that night. About an hour and forty-five minutes after Hall came I went off duty. After Hall came I remained in the office about an hour and twenty-five minutes. I never called Hall's attention to these letters when he came in first. He took them. I saw him take them. I had always placed them there prior to that time. He said nothing to me about them, not a word; never had said anything to me about these special-delivery letters. I had never told him where they *they* could be found. I mean to say that without telling him anything about them he could go and place his hands upon the special-delivery letters that I had placed upon the desk; that was his usual practice. The usual daily practice was that he would take the letters without being told. I had never been special-delivery clerk, and had no charge of the duties of the special-delivery clerk. My work was general work. I knew something about special-delivery letters—where they were kept—before I came on duty as clerk. I knew they had always been kept in that one place. The desk where they were kept was an open desk. It was nobody's desk. It was a general desk. No other letters were kept there. It was a desk that was
34 devoted particularly to special-delivery letters. The desk was about three feet long; about three feet high; had two drawers; was an open-top desk; not covered; no pigeon-holes. The whole desk was devoted specially to special-delivery letters. On that day there were nine special-delivery letters. I can't state on what particular part of the desk I placed these letters. I did not place them in a pigeon-hole. I placed them on the top of the desk; that had always been my custom. There was nothing else in the desk; never had been, so far as I know. During all my service there as clerk that desk had been devoted to that purpose. I never examined the drawers to see whether there was anything inside

or not. I think there was something inside some time. I have seen some of the clerks sitting at the desk; they were doing nothing; don't remember how often. It was not a general custom to see clerks sitting at that particular desk doing nothing. No other clerk came there that morning before Hall; he was the first one there. After he came in, he and I were all alone. He took up the special-delivery letters about five minutes after he came. After that he took them away from that desk and put them on his own, we suppose. He took the letters, but I do not know what he did with them. I did not see him doing anything with them, but I saw him take them. After I saw him take them, I did not see him do anything. I did not see whether he went out of the post-office or stayed in. He was there with me all that time until about
35 seven o'clock—until I left at 7.15. Hall went out at seven o'clock. Up to that time I do not know where he was or what he had been doing, except that he was there in the office. I did not see him making any entries in any book. I was separating letters. I did not face Hall's desk. I was not paying any attention to Hall. My back was not to Hall's desk. There is a case between his desk and where I was; one of these pigeon-hole cases where you can see through. I know nothing about what happened after Hall came in. I wanted to see him while he was at work at his desk. There was nothing to prevent my seeing. I did not go out of the office until 7.15. Hall went out at seven. Hall did not come back before I went out. When I went out there were two other clerks in the office; they came at 5.30. Before that there were no other persons in the office but Hall and myself. Other clerks came in at 5.30—about six or seven. They worked in the same room; some of them stayed until I went out. They were all doing post-office work—separating letters same as myself. All the other clerks reported at 5.30. I swear that between 5.20, when Hall arrived, and before all the other clerks had arrived there at 5.30, that Hall had taken this package of special-delivery letters from that desk. I saw him. The letters on that special-delivery desk were not in a package, but were loosely thrown. I say that he took up those special-delivery letters prior to the other clerks arriving before half past five. I was aware that these two letters had been specially prepared as test-letters and were in that package. Mr. Jacobs told me so. He handed me those letters specially. He did not
36 request me to make any note of them, only to look at the addresses, which I did. I know of my own knowledge that there were special-delivery stamps on those letters; I knew them to be decoy or test letters; Mr. Jacobs told me they were. I kept my eye on them until they were in Hall's hands. I left the office about 7.15 o'clock, and I did not ascertain at that time whether these two letters were there or had been abstracted. I had no orders to find out whether these letters were taken or not. I do not know whether it would have been possible while I was there with Hall for him to have extracted anything from those letters without attracting my attention or without my seeing him. The pigeon-hole box, which stood between me and Mr. Hall, did not have a glass back. I did

not watch Hall after I saw him take the letters. I saw the letters after I placed them on the special-delivery desk, but not on his desk; I put them there myself; I saw them there five minutes before Hall came in; I looked specially to see that they were there; my attention was only called to these two letters; I had never seen those two letters since; I searched for them in the office.

JACOB WEIL sworn and examined as a witness on behalf of the Government.

Direct examination by Mr. HINMAN:

I live at 218 East 115th St.; I am chief clerk in Station F, branch post-office, 28th street and 3rd avenue. I know the defend-
37 ant Hall; I know the last witness on the stand. I was on duty the morning of the 10th of September; went on duty about 5.50—between 5.50 and 5.55 a. m. I found Hall there and Baer and the ordinary force. I went to the office between 5.50 and 5.55 a. m. I noticed what Hall was doing; he was writing up special-delivery letters; that was one of his regular duties. I know his handwriting; I have often seen him write—couple of hundred times. I knew at that time of test-letters being there. Hall went away at seven o'clock to breakfast. I examined the special-delivery book. I knew how these letters were addressed. One was to Miss Nansen in 35th street, and the other to Mrs. Susan Metcalf in 24th street. I have the special-delivery book here in my possession. I examined the special-delivery book with reference to these letters three or four minutes after Hall vacated his seat at the desk and went out. The entries on this page at the bottom, under the red line, are partly in Hall's handwriting. I find the entry there of one of these letters in Hall's handwriting. The letter directed to Miss H. Nansen, at 442 East 35th street, that entry is in Hall's handwriting. The letter addressed to Mrs. Susan Metcalf is not there. The first entry is in the book. The reason that entry happens to be made there at that hour instead of the correct hour is that there was a 3.30 backer used for that; that was the stamp, I understand; that was there when Mr. Jacobs entered the office. That entry simply meant that that entry was taken from the backer stamp and was backed with the backer stamp that is changed once an hour. The entry there is Hall's handwriting.

38 Offered and received in evidence and marked "U. S. Exhibit 5."

There are ten entries in all in Hall's handwriting on that page.

I will read the entry, which is as follows: "Under number of letter 1, Nansen, Miss. H., 442 East 35th street, N. Y. city, 3.30." The hours of the other entries are running from 3.30; second is 3.30; third entry is 11.30; the fourth entry is one 6, 6.30, 6, 7.30, 7.30. I think that is all. I find no entry of the Metcalf letter there. I made a search to find that letter. I looked around the special-delivery desk and looked through the record of the book and I could not find it; it was not in the special-delivery desk—no indication of it.

Cross-examination by Mr. BUTTS:

We have an office stamp which indicates the time of the receipt of letters; we call it a backer's stamp; when stamped upon a letter that indicates the hour the letter was received; it depends upon what part of the day it is as to how often we change that stamp. Between four in the morning and seven o'clock in the morning we would have the stamps 6.30, 7, and so on. From four o'clock on the backer stamp is changed, 5.30 and 6. Letters received at 4 a. m. ought to have the 5.30 stamp. Letters delivered between four and five o'clock ought to have the same stamp, but I do not believe we receive any mail between those hours; therefore we change between 5.30 and 6 when we receive the mail; that is the cause of not having an hour for stamping. We do not have a half-hour stamp
39 at 4.30, because we receive no mail. We change the stamp usually about the time of receiving the first mail at about 3.30, so that this record as it appears, 3.30, shows that the letters stamped were received between 4 and 5 o'clock; that was the way business was done at that office. I am, as I have said, the chief clerk. The backer's stamp is put on the letter to indicate time of its being received; we strive to be reasonably correct—within a half hour or so. There is a 1 o'clock, 1.30, a 2.30 and a 3.30 stamp at night. After 3.30 the next stamp is 5.30, 6, and so on, and then half hourly through the day. Any letters received between those hours are stamped 3.30, but we do not receive any ordinary mail between 3.30 and 5.30. We ordinarily receive mail all through the night, but we have no use for the backer's stamp. We have a face stamp changed every half hour; the facing stamp is an oblong stamp with the date. We do not put the backer stamp on those letters because we do not receive any, but if we do we use a 3.30 on them. I do not mean to say that a letter received at one o'clock would have the stamp of 3.30; it would have the stamp of 1.30. All letters received at 3.30 o'clock until 5 o'clock retain the 3.30 stamp, but we have no use for a backer because we receive no mail. We did this day, but it was a special occasion. Of the ten names upon this entry of September 10th I show you those in the handwriting of Hall and identify his handwriting as follows: Mrs. H. Nansen, Miss W. R. H. Martens, A. Gurring, F. H. Pierce, Miss L.
40 Clock, Mrs. I. M. Stewart, or Snoot I make it; Hon. M. A. Hanna, Dr. E. H. Peasley, G. M. Lane, Mrs. G. M. Worn. The red line indicates (which was drawn by Mr. Hall through the middle of the page) that all before that line was sent out the day before, before 11 o'clock, the hour of closing and receiving special-delivery letters. Anything received after that hour is held over until the next morning; you will find that red line every day.

HENRY BAER recalled and examined by Mr. Butts:

I know a man by the name of Murray. Murray was not in the office that morning on the night of September 10th before Hall came. When Hall came Murray might have been downstairs. I will not swear, because I don't know, that Murray was downstairs in the toilet-room, and that he had come in and reported for business.

I don't know. He was not in the office before Hall; I am positive of that; he might have been upstairs; if he went downstairs he had to go through the office; he could have gone downstairs without my seeing him; he could have gone down without my seeing him, but ordinarily I would see him; but I say that he had not been there before Hall.

Evidence closed.

The Government rests.

Counsel for defendant then asked the court to direct the jury to acquit the defendant upon the following grounds:

First. That all the evidence submitted by the Government fails to prove the crime charged in the indictment against the
41 defendant, and the court should direct the jury to acquit the defendant.

Second. A material allegation to be proved by the Government was the fact that the letter described in the indictment alleged to have been secreted, destroyed, or embezzled and its contents stolen by the defendant was intended to be delivered by a letter-carrier, while the testimony of the witnesses for the Government, Jacobs and Dillon, proves that such letter was not intended to be delivered by a letter-carrier. Wherefore a material allegation in the indictment is not only not proven, but absolutely disproved.

Third. Upon the testimony of the Government witnesses Dillon and Jacobs the defendant cannot be convicted of the crime charged in the indictment.

Fourth. Upon all the evidence submitted by the Government the defendant cannot be convicted of the crime charged in the indictment.

Fifth. There is a fatal variance between the indictment and the proofs offered to sustain it by the Government, and the defendant ought not therefore to be convicted and his motion to acquit should be granted.

Each of the foregoing motions to direct an acquittal of the defendant were denied by the court; to which refusals and each of them counsel for the defendant duly excepted.

42 The defendant rested, and the court proceeded to charge the jury as follows:

BROWN, *J.*:

The points that have been raised by the counsel for the defendant in his argument and requests to charge have reference to a technical point as regards the language of the indictment, which it is the province of the court alone to decide and which will be passed upon hereafter by the court. It is not a question which you have to do with, and therefore you will dismiss it entirely from your minds.

The general doctrine is that — is permissible and right under this statute that test-letters may be deposited for the purpose of ascertaining who takes them—that is, who is robbing the mails—and this has been repeatedly upheld by the courts. Therefore, in de-

termining the question now submitted to you I will say that if on this evidence you are satisfied beyond a reasonable doubt that the defendant took these bills which have been produced before you from the letter addressed to Mrs. Metcalfe, it is your duty to find a verdict of guilty. It is all summed up in just that one question: If you are satisfied beyond a reasonable doubt that the defendant took these four bills marked, numbered, and described to you from that letter, it is your duty to convict him. I say beyond a reasonable doubt, and by that I mean a doubt for which there is a solid foundation and reason—a doubt founded upon reason and common sense.

The question involves several different propositions: In the
43 first place, whether those bills were put in that letter. If you have a reasonable doubt about that, you ought not to convict him. Have you any reasonable doubt? Can you have any reasonable doubt?

Two officers have sworn that these bills were put into that letter. They state to you the marks and the numbers. The same two officers testified that the letter containing those bills, directed to Mrs. Metcalf, was deposited early that morning—the 10th of September—in Station F. Mr. Baer corroborates them by saying he saw the letter, with a special-delivery stamp, put with ten others that were in the office where such letters are usually placed. He was told what they were, and he knew that they were test letters. He testified that he watched them closely; that he saw this very letter there five minutes before the defendant came in. In about five minutes afterwards, before anybody else came into the office, the defendant took all the special-delivery letters that were there, eleven in all. He paid no further attention to them. He performed his duty, he said. That was all he was instructed to do. He placed no further watch upon his fellow-clerk than what he was ordered to do—to see where these letters went to. When he had done that he did not look any further.

Now, if you believe that testimony, then this letter came to defendant's hands, and these bills, if you believe the officers' testimony, are the same bills.

I should say that when the defendant was arrested, a short time afterwards, and brought down to this building he produced the same four bills. That is the evidence, gentlemen; that is the evidence.

If there is a reasonable doubt as to either part of this chain,
44 you will give the defendant the benefit of that doubt; if there is any reasonable doubt about it, it is your duty to acquit.

It is an important matter. It is not one to be dealt with lightly on either side. It is important to the defendant, and it is equally important to the Government, as representing the whole community. The Government has no interest of its own in carrying the mails; the Government does the work for the people. The people look to the Government, and rightly, to defend the mails against embezzlement and to use vigorous effects to detect who are the guilty persons. The Government has organized an important force, whose

duties it is to act diligently to discover guilty persons. These officers have no personal interest, so far as can be perceived, in prosecuting any particular person. It is their duty, it is their bounden obligation, to do all that they can to ferret out who is guilty in a case where complaint is made of money missing from any particular place. All they can do is to do that duty faithfully; to tell you every step that they have taken and bring that case to you.

The conclusion rests with the jury.

If the evidence presented by the prosecution is sufficient beyond a reasonable question, there must be no hesitancy in the jury to find accordingly.

DEFENDANT'S ATTORNEY: Your honor, I ask the court to charge the jury that, so far as the evidence of Baer is concerned here, that the record shows that there were not eleven letters, special-delivery letters, delivered to Hall. That is the evidence in this case—that the book shows that on the 9th and on the 10th two letters were delivered
marked 3.30; then follows date September 9th, 11.30. The
45 others are under date of September 10th and at a date later
than the time that Hall came there in the morning; so that the testimony of Baer cannot be relied upon, if this record is true, and I should like to have the jury take this book to show the exact entries on that date, as far as this entry is concerned. The point is that they were entered after he came there, when Baer says the eleven letters were there to be registered.

The COURT: There is no evidence as to the stamps that were on the letters themselves. These were entries of the defendant. The argument is that the letter to Metcalfe was not entered because the defendant took it. That is the case that the Government submits to the jury. He did not enter the letter because he took the letter and the bills, the Government says.

(The jury rendered a verdict of guilty, as charged in the indictment.)

A motion in arrest of judgment and for a new trial was then made and the argument thereon thereafter duly heard. The said motion was denied.

And forasmuch as none of the said matters and exceptions so offered and made to the rulings and directions of said judge do appear upon the records of said case, the counsel for defendant does tender this bill of exceptions and prays that the same be allowed.

Wherefore the said judge at the prayer of said counsel for
46 defendant approves and allows said bill of exceptions, and
certifies the same to contain all the evidence and a record of all the proceedings had upon the trial of this cause, and orders that the same be filed *nunc pro tunc* as of November 24th, 1896.

Dec. 16, 1896.

ADDISON BROWN, *U. S. D. J.*

Settlement consented to.

WALLACE MACFARLANE,
U. S. Attorney.

(Endorsed:) United States circuit court, southern district of New York. United States of America against William R. Hall. Defendant's bill of exceptions. Arthur C. Butts, of counsel for defendant, 206 Broadway, N. Y. city. U. S. circuit court. Filed Dec. 19, 1896. John A. Shields, clerk.

47 United States Circuit Court, Southern District of New York.

THE UNITED STATES
against
WILLIAM R. HALL.

Upon all the proceedings had herein and upon motion of James R. Angel, attorney for defendant, and Arthur C. Butts, Esq., of counsel for the defendant, it is—

Ordered that the execution of the sentence herein be stayed until December 26th, 1896; and it is further—

Ordered that the defendant may be enlarged on bail herein upon allowance of writ of error to the United States Supreme Court upon giving a recognizance in the sum of $3,500, and the clerk of this court is authorized to take such recognizance.

ADDISON BROWN.

Entry of within order is consented to.

WALLACE MACFARLANE, *U. S. Att'y.*

Dec. 19, 1896.

(Endorsed:) U. S. circuit court, so. dist. of New York. The United States *vs.* William R. Hall. Order suspending sentence and admitting defendant on bail. Arthur C. Butts, of counsel for def't, 206 B'way, N. Y. city. U. S. circuit court. Filed Dec. 19, 1896. John A. Shields, clerk.

48 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.

On all the proceedings in this cause, on motion of Arthur C. Butts, defendant's attorney, it is—

Ordered that all proceedings herein be, and the same hereby are, stayed until December 29th, 1896.

A. BROWN.

Entry of within order is consented to.

WALLACE MACFARLANE,
U. S. Attorney.

(Endorsed:) U. S. circuit court, southern dist. N. Y. United States of America *vs.* William R. Hall. Order staying execution sentence. Arthur C. Butts, def't's att'y, 206 Broadway, N. Y. city. U. S. circuit court. Filed Dec. 26, 1896. John A. Shields, clerk.

49 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.

Assignment of Errors.

The said William R. Hall, the defendant herein, on the 28th day of December, 1896, by Arthur C. Butts, of his counsel, makes the following assignment of errors in the record and proceedings of the above-entitled action:

First. The court erred in allowing the witness for the Government, Edmund H. Dillon, to give in evidence a copy of the letter written and addressed to Susan Metcalf at 346 East 24th street, N. Y. city, under objection of defendant's counsel, as contained in the settled bill of exceptions.

Second. The court erred in denying the motion of defendant's counsel to direct the jury to acquit the defendant, as contained in the settled bill of exceptions.

Third. The court erred in denying the motion of defendant's counsel to direct the jury to acquit the defendant upon the first, second, third, fourth, and fifth grounds of said motion, as contained in the bill of exceptions as settled.

50 Wherefore the said judgment of conviction should be reversed.

Dated December 28th, 1896.

ARTHUR C. BUTTS,
Of Counsel for Defendant.

(Endorsed:) United States circuit court, southern district of New York. United States of America *vs.* William R. Hall. Assignment of errors. Arthur C. Butts, of counsel for defendant, 206 Broadway, New York city. To John A. Shields, Esq., clerk U. S. cir. court. U. S. circuit court. Filed Dec. 28, 1896. John A. Shields, clerk.

51 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.
} Bond for Damages and Costs.

Know all men by these presents that we, William R. Hall, as principal, and Elizabeth H. Birss, of 675 East 155th St., and Lindsay Williamson, of 1084 East 175th St., in the city, county, and State of New York, are held and firmly bound unto the above-named United States of America in the sum of two hundred and fifty dollars, to be paid to the said United States of America; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 26th day of December, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas the above-named William R. Hall has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment of conviction rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named William R. Hall shall prosecute said writ of
52 error to effect and answer all damages and costs if said William R. Hall fail to make said writ of error and plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM R. HALL. [SEAL.]
ELIZABETH H. BIRSS. [SEAL.]
LINDSAY WILLIAMSON. [SEAL.]

Sealed and delivered and taken and acknowledged this 26th day of Dec., 1896, before me—

JOHN A. SHIELDS,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Elizabeth H. Birss and Lindsay Williamson, being duly sworn, doth depose and say that they are and that he and she is severally worth the sum of five hundred dollars over and above all his and her just debts and liabilities.

ELIZABETH H. BIRSS.
LINDSAY WILLIAMSON.

Sworn to this 26th day of Dec., A. D. 1896, before me—

JOHN A. SHIELDS,
U. S. Commissioner.

(Endorsed:) U. S. circuit court, southern district of New York. United States of America *vs.* William R. Hall. Bond for damages and costs on writ of error. Approved Dec. 26, '96. A. Brown. U. S. circuit court. Filed Dec. 26, 1896. John A. Shields, clerk.

53 At a stated term of the circuit court of the United States for the southern district of New York held at the United States *and* post-office building, in the city of New York, on the 29th day of December, 1896.

Present: Hon. Addison Brown, judge.

THE UNITED STATES OF AMERICA
vs.
WILLIAM R. HALL.

On the application of William R. Hall therefor and after hearing Arthur C. Butts, his counsel, it is—

Ordered that pending the writ of error herein to the Supreme

Court of the United States William R. Hall herein may be, and he hereby is, remanded to the custody of the marshal for the southern district of New York; that he be released on bail by giving a recognizance in such form as may hereafter be approved by the court in the sum of thirty-five hundred dollars to obey the mandate or direction of the court upon the entry of judgment upon the decision of the Supreme Court on said writ of error; and it is further—

Ordered that the said writ of error as allowed herein shall operate as a supersedeas, and that until the further order of this court on the mandate of the Supreme Court that all proceedings of this court be, and they are hereby, stayed.

ADDISON BROWN.

54 (Endorsed:) United States circuit court, southern district of New York. United States of America against William R. Hall. Supersedeas, etc. Arthur C. Butts, attorney for defendant, 206 Broadway, New York city. To John A. Shields, Esq., clerk, &c. Copy of the within supersedeas, etc., received this day. Wallace Macfarlane, U. S. attorney. Dec. 29, 1896. U. S. circuit court. Filed Dec. 29, 1896. John A. Shields, clerk.

55 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 27th day of January, 1897, pursuant to a writ of error filed in the clerk's office of the circuit court of the southern district of New York, wherein William R. Hall is plaintiff in error and you are defendant in error, to show cause, if any there be, why the conviction and sentence rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-six.

ADDISON BROWN,
U. S. Judge.

56 [Endorsed:] E. & A. B. 1471. United States circuit court, southern district of New York. The United States of America against William R. Hall. Citation. Arthur C. Butts, of counsel, 206 Broadway, New York city. To John A. Shields, Esq., cl'k cir. court, &c. Copy of the within citation received this day. Wallace Macfarlane, U. S. attorney. 10 p'd. U. S. circuit court. Filed Dec. 29, 1896. John A. Shields, clerk.

Endorsed on cover: Case No. 16,500. S. New York C. C. U. S. Term No., 312. William R. Hall, plaintiff in error, *vs.* The United States. Filed February 26th, 1897.

No. 312.

Motion by D. C. to advance.

Filed Oct. 12, 1897.

Office Supreme Court, U. S.
FILED
OCT 12 1897
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM R. HALL, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 312.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM R. HALL, PLAINTIFF IN ERROR.
vs.
UNITED STATES.
} No. 312.

Motion to Advance.

The plaintiff in error, a Postal Clerk in Station F of the United States Post Office, New York City was indicted in the Circuit Court of the United States for the Southern District of New York on October 13th, 1896, for secreting and embezzling a certain letter and stealing the contents thereof in violation of Section 5467 of the Revised Statutes. He was tried on October 20th and October 21st, 1896, and found guilty. On the 24th day of November, 1896, he was sentenced to imprisonment in the Kings County Penitentiary for ~~one~~ two year. His bail was fixed by the Court in the sum of three thousand five hundred dollars pending the decision of this Court on his writ of error, but he has been unable to furnish said bail and is now imprisoned in Ludlow Street Jail in the City of New York.

The attorney for the plaintiff in error respectfully moves the Court to advance the case on the docket and set it down for a day convenient to the Court during the present term.

Notice of this motion has been served on the Attorney General of the United States, and proof of service filed with the Clerk.

Wm. R. Hall & Butts

Attorney for the Plaintiff in Error.

No. 312,
Brief of Butts for D. C.
Filed Nov. 27, 1897.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 312.

WILLIAM R. HALL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

ARTHUR C. BUTTS,
Solicitor for Plaintiff in Error.

Supreme Court of the United States.

WILLIAM R. HALL,
Plaintiff in Error,

vs.

THE UNITED STATES.

Brief for Plaintiff in Error.

FACTS.

The plaintiff in error was indicted by the Grand Jury in the United States Circuit Court for the Southern District of New York, by an indictment filed in said Court October 13th, 1896. See Printed Record (folios 8-13), pages 4-6. The trial of the plaintiff in error was held before Mr. Justice Brown and a Jury October 21st, 1896.

At the close of all the evidence submitted by the Government the Counsel for the plaintiff in error requested the Court to direct the Jury to acquit the prisoner upon the five grounds found in the printed record at (folios 40-42), page 20, which request was denied, to which refusals and each of them Counsel for the prisoner duly excepted. (See folio 41), page 20. The plaintiff in error was found guilty of the charge laid in the indictment (folio 45), page 22, and on November 24th, 1896, was sentenced to two years inprisonment at hard labor at Kings County Penitentiary (folio 13), page 6.

On the 29th day of December, 1896, a Writ of Error was

allowed bringing the record hereof into this Court upon the following assignment of Errors relied upon here:

Second. The Court erred in denying the motion of defendant's counsel to direct the Jury to acquit the defendant as contained in the settled bill of exceptions.

Third. The Court erred in denying the motion of defendant's counsel to direct the Jury to acquit the defendant upon the first, second, third, fourth and fifth grounds of said motion as contained in the bill of exceptions as settled, (folio 49), page 24.

POINTS.

I.

The indictment is found under Section 5,467 of the Rev. Stat. of the U. S., and contains *three counts.*

Each of the Counts contains the charge, that the plaintiff in error was "employed in a department of the postal service of the United States, to wit, as a Clerk at Station "F," a branch Post Office of the United States in the said City of New York.

The first and second Counts charge, that as such Clerk, Hall did unlawfully, &c., secrete, embezzle and destroy a certain letter directed and addressed to Mrs. Susan Metcalf, No. 346 East 24th St., New York City, N. Y., which had been entrusted to said Hall by virtue of his office and employment, and which said letter, "WAS INTENDED TO BE DELIVERED BY A LETTER CARRIER."

The third count contains the same allegation as the first and second Counts as to Hall's employment in the P. O. department, and that the letter was intended to be delivered by letter carrier," but charges that the *contents* of said letter, to wit, three one dollar silver certificates were feloniously stolen, &c.

Under the indictment and to sustain a general verdict of "guilty" upon the three counts, the Government was bound to prove these allegations.

First. That Hall was in the employ of the Government of the United States in the postal service.

Second. That while in such employ, he was entrusted with the letter described in the indictment.

Third. That such letter was intended to be delivered by a letter carrier.

Fourth. That as such postal clerk having a letter in his possession intended to be delivered by a letter carrier, he secreted, embezzled, destroyed or stole the contents thereof.

The only evidence offered by the Government to sustain the allegation in each of the three counts of the indictment, that the said letter was intended to be delivered by a letter carrier, is that of Joseph E. Jacobs (folios 27-28), page 13, and Edmond M. Dillon (folio 31), page 15.

It is respectfully submitted that when the Government closed its case, no evidence was before the Court upon which the plaintiff in error could be lawfully convicted, and that the Court erred in not granting Counsel's motion directing the jury to acquit the prisoner. (See folios 40-41-42) page 20, as set forth in the second and third assignment of errors herein (folios 49), page 24.

II.

Under Section 5467 of the Rev. Stat. of the U. S., the Court will note that the language defining the crime thereunder is as follows:

"Any person employed in any department of the postal service who shall secrete, &c, * * any letter * * which was intended *to be conveyed by* mail or carried or delivered by any mail carrier, mail messenger, route agent, *letter carrier*," &c.

It is quite evident that under this section, according to the facts to be proved showing guilt, that the indictment may charge that a letter:—

1st. Was to be conveyed by mail.

2nd. Was to be delivered by a letter carrier.

But if the indictment charges either the former or the latter *the charge in the indictment must be proved as laid.*

Matthews vs. U. S.; 35 Fed. Rep., 890.
United States vs. Denike, 35 Fed. Rep., 407.
United States vs. Wright, 38 Fed. Rep., 106.

The Matthews case above was followed in U. S. vs. Dorsey, 40 Fed. Rep., 750.

These decisions paved the way for the decision of this Court in the case of U. S. vs. Good, 159 U. S. Rep., 661, which it would seem is *absolutely conclusive* that the Court erred in denying the motion to direct the jury to acquit the prisoner upon the trial.

III.

The learned trial Court erred in not granting the motion of the counsel for the plaintiff in error directing the jury to acquit the prisoner, and the grounds of such error fully appear in the opinion of the Court denying the motion in arrest of judgment and for a new trial, (folios 14–19). pages 7–9.

It will be seen that the learned Court sustained the contention of counsel as to the first and second counts of the indictment saying:

"This indictment however is not framed under the "conveying" clause of Section 5467, but upon the averment that the letter was "intended to be delivered by a letter carrier." As the government choose this as one of the several necessary averments in the first two counts drawn upon the first part of Section 5467, I think it is bound by the particular clause on which those indictments are drawn and that the verdict cannot stand upon these counts."

This would seem to settle the matter.

But the learned Court then takes the extraordinary position that while the conviction could not stand under the two counts

above referred to it could stand under the third count for the reason as stated:

"2. The last clause of Section 5467 upon which the third count is framed *does not require either of the above averments*" *i. e.*, that *either that the stolen letter was intended to be conveyed by mail or delivered by a letter carrier*," &c.

And the Court therefore threw out the allegation of the third count that said letter was intended to be delivered by a letter carrier as *surplusage* and held the plaintiff in error could be convicted under said third count.

This reasoning guided the learned Court in denying counsel's motion to direct a verdict of acquittal and such denial was error, but it is inconceivable how the Court was misled into the same.

1st. The Court holds necessarily that the last clause of Section 5467 has no relation to the former part of said section.

2nd. That an indictment could be framed under said clause independent of the other provisions of the said section.

3rd. That under said last clause the words "*any such person*" &c. can be convicted of stealing the contents of a letter which came into his possession as such P. O. employee, even if the letter was never intended to be conveyed by mail or delivered by a letter carrier.

It is respectfully urged that this is error.

The whole section must be construed together and it will then be seen what the elements of the offences are therein.

It will be found that the person must be (1) a post office employee and (2) must have had entrusted to him a letter, &c., intended to be conveyed by mail or delivered by a letter carrier (in this case) and (3) such letter must contain something of value, &c. If such person so appointed and having a duty to perform secretes, &c., such letter he is guilty of a crime under such section.

And when the last clause of such section provides that "*any such person*" steals the contents of any letter &c., can there be a reasonable doubt that "such person" is that person referred to in the first part of Section 5467, to wit:

1st. A Post Office employee.

2nd. A Post Office employee to whom was intrusted a letter intended to be conveyed by mail or delivered by a letter carrier.

3rd. Who secretes, embezzles, destroys a letter containing something of value *or steals* the contents thereof?

The language of Section 5468 is conclusive that the crime charged in Section 5467 is that a Post Office employee tampers with or steals a letter of value on its way through the mails. *Because* it says that, that the deposit &c., "shall be evidence that the same was intended to be conveyed by mail &tc. Does not that language apply to the last clause of Section 5467? Would an indictment under that last clause be complete unless it charged either that the letter stolen was to be conveyed by mail or delivered by a letter carrier.

But in the Matthews case (above) Judge Harlan distinctly says the presumption can be overcome, and in that case as in the case at bar was overcome by direct evidence, that it was not the intention that the letter should be delivered through the mail."

The case U. S. vs. Good cited above would seem to be conclusive upon this point.

IV.

The case of U. S. vs. Montgomery, 162 U. S. Rep., 410 is not in point here.

In that case the main question before the Court was as to a variance between the allegation and proofs *that the letter was a decoy letter.*

THERE IS NO QUESTION MADE IN THIS CASE UPON THAT GROUND.

But it is earnestly contended that if a letter *decoy or otherwise* under Section 5467 as alleged in the indictment was intended to be delivered by a letter carrier *that the charge must be proved as laid and if not* there is a fatal variance entitling the

prisoner to a verdict of acquittal. And as there was no disputed question of fact for the jury the matter was one of law for the Court and his refusal to direct a verdict upon the evidence was error.

The judgment of conviction should be reversed and a new trial granted.

ARTHUR C. BUTTS,
Solicitor for Plaintiff in Error,
206 Broadway,
N. Y. City.

NOV 26 18
JAMES H. McKENNEY,
CLERK

No. 312.

Brief of Atty. Gen.l (Boyd) for U. S.

Filed Nov. 26, 1897.

In the Supreme Court of the United States

OCTOBER TERM, 1897.

WILLIAM R. HALL, PLAINTIFF IN error,
vs.
THE UNITED STATES. } No. 312.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

JAS. E. BOYD,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM R. HALL, PLAINTIFF IN error,
vs.
THE UNITED STATES. } No. 312.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The plaintiff in error was convicted on an indictment under section 5467 of the Revised Statutes. The indictment (Rec., pp. 4, 5, and 6) contains three counts. The jury returned a verdict of guilty as charged in the indictment. After the verdict, upon motion of counsel for the plaintiff in error, the judgment was arrested upon the first and second counts, and pronounced by the court upon the verdict of guilty under the third count in the bill of indictment. For convenience, the third count of

the indictment, which is the one to be considered here, is copied in this brief, and is as follows:

> And the jurors aforesaid on their oath aforesaid do further present that William R. Hall, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-six, at the southern district of New York and within the jurisdiction of this court, being then and there employed in a department of the postal service of the United States, to wit, as a clerk at Station F, a branch post-office of the United States in the said city of New York, did unlawfully, willfully, and feloniously steal, take, and carry away a certain United States Treasury note of the denomination and value of one dollar and three several silver certificates of the United States, each of the denomination and value of one dollar, the said Treasury note and the said silver certificates then and there being the money and property of one Joseph E. Jacobs, and the same Treasury note and the same silver certificates were then and there feloniously stolen and taken, as aforesaid, by the said William R. Hall from and out of a certain letter which then and there had come into his possession in his capacity as such clerk, as aforesaid, and by virtue of his said office and employment, and the said letter was directed in the tenor following, that is to say: "Mrs. Susan Metcalfe, No. 346 E. 24th st., New York City, N. Y.," and the same was then intended to be delivered by a letter carrier and had not then been delivered to the party to whom the same was directed, against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided.

The assignments of error are based upon the refusal of the court below to instruct the jury as requested by the counsel for the plaintiff in error, as set forth in Record, page 20, as follows:

> Counsel for defendant then asked the court to direct the jury to acquit the defendant upon the following grounds:
>
> First. That all the evidence submitted by the Government fails to prove the crime charged in the indictment against the defendant, and the court should direct the jury to acquit the defendant.
>
> Second. A material allegation to be proved by the Government was the fact that the letter described in the indictment alleged to have been secreted, destroyed, or embezzled, and its contents stolen by the defendant, was intended to be delivered by a letter carrier, while the testimony of the witnesses for the Government, Jacobs and Dillon, proves that such letter was not intended to be delivered by a letter carrier. Wherefore a material allegation in the indictment is not only not proven, but absolutely disproved.
>
> Third. Upon the testimony of the Government witnesses, Dillon and Jacobs, the defendant can not be convicted of the crime charged in the indictment.
>
> Fourth. Upon all the evidence submitted by the Government the defendant can not be convicted of the crime charged in the indictment.
>
> Fifth. There is a fatal variance between the indictment and the proofs offered to sustain it by the Government, and the defendant ought not therefore to be convicted and his motion to acquit should be granted.
>
> Each of the foregoing motions to direct an acquittal of the defendant were denied by the court; to which refusals and each of them counsel for the defendant duly excepted.

POINTS AND ARGUMENT.

From an examination of the testimony in this case, it is ascertained that the letter alleged to have been stolen by the plaintiff in error was what is commonly known as a "decoy letter." It was a letter prepared by two post-office inspectors, namely, Joseph E. Jacobs and Edmond M. Dillon, and was addressed to a fictitious person at a fictitious number, namely, to Mrs. Susan Metcalfe, 346 E. 24th st., New York City, and in which were inclosed four one-dollar bills, marked so as to be capable of identification.

Hall, the plaintiff in error, was an employee of the Post-Office Department, being a regularly employed clerk in the Station F, at the branch post-office, New York City. (See testimony of Joseph E. Jacobs, beginning at Record, p. 11.)

The letter above referred to and another, which was also prepared by the two inspectors, were placed as special-delivery letters in the hands of one Baer, another post-office employee at Station F, on the 10th of September, 1896, about 20 minutes past 4 in the morning. (See testimony of Jacobs, Record, p. 12; also of Dillon, beginning Record, p. 13.)

Baer, the person to whom the letters were delivered by the inspectors, testified (Rec., p. 15) that he placed the two letters delivered to him by Jacobs and Dillon with other special-delivery letters at the station and put them on the special-delivery desk, where the special-delivery clerk was in the habit of getting the letters, and that at 5.20 a. m. on the same day of the delivery

he saw Hall take the batch of letters from the desk in which these two letters were included. The testimony shows further, and there is no contradiction of the fact, for the plaintiff in error introduced no evidence in the court below, that about 7.25 o'clock of the same morning on which the two special-delivery letters were mailed by the inspectors as before recited Hall was arrested and the four bills, which were identified as the four one-dollar bills inclosed in the letter by Jacobs in the presence of Dillon, found in his possession.

The only point for consideration is, therefore, as to whether the facts are sufficient to sustain the charge under the third count in the indictment, and, in the second place, whether there is variance between the allegations in this count and the proof introduced by the Government. It is decided that a letter addressed to a fictitious person, known to be such, is a letter within the meaning of the statute and for the purposes of Revised Statutes, section 5467. Also that a letter which bears the outward semblance of a genuine communication and comes into the possession of the employee in the regular course of his official business is a writing or document within the meaning of the statute. (Goode *vs.* U. S., 159 U. S., 663.) And, following up this case, it is held in Montgomery *vs.* U. S., 162 U. S., 410, that, in the trial of an indictment against a letter carrier charged with secreting, embezzling, or destroying a letter containing money in United States currency, the fact that the letter was a decoy was no defense. The carrier's duties are the same whether the letters are genuine or decoys.

Now as to the points raised by counsel for defendant in the court below.

The first two counts in the bill of indictment upon which the judgment was arrested charge that the defendant—

> did * * * secrete, embezzle, and destroy a certain letter directed and addressed in words and figures as follows, to wit: "Mrs. Susan Metcalfe, No. 346 E. 24th st., New York City, N. Y.," which said letter had been entrusted to the said William R. Hall, and had come into his possession in his capacity as such clerk and by virtue of his said office and employment, and was intended to be delivered by a letter carrier, and the said letter then contained articles of value—that is to say, three silver certificates of the United States, each of the denomination and value of one dollar, and one United States Treasury note of the denomination and value of one dollar.

The second count presents the charge in the same words, and, in addition, gives a copy of the letter and also a more specific description of the four one-dollar bills enclosed. (Rec., pp. 4 and 5.)

The court below arrested the judgment upon the first and second counts, upon the ground that the evidence did not sustain the charge that the letter was intended to be delivered by a letter carrier, it being the opinion of the court that it was essential for the Government to prove this fact, which was alleged in the indictment and was a material element of the offense as charged in this count. But this question is not for review in the court here, because, as before stated, the judgment was arrested on

counts one and two in the bill and judgment entered on count three, which we now come to consider.

The third count in the bill is under the last clause of section 5467 of the Revised Statutes, and, discarding that part of the section which describes the offense charged in the first and second counts of the bill, it would read as follows, as to the offense charged in the third count:

> Any person employed in any department of the postal service who shall * * * steal or take any of the things aforesaid out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punished, etc.

The "things aforesaid" referred to are set forth specifically in the said section, and include a number of articles named and, among others, "any article of value." The articles of value charged in the third count of the bill are "a certain United States Treasury note of the denomination and value of one dollar, and three several silver certificates of the United States, each of the denomination and value of one dollar."

It is further charged in the third count that the said William R. Hall "did unlawfully, willfully, and feloniously steal, take, and carry away" these articles of value from and out of a certain letter which then and there had come into his possession in his capacity as such clerk as aforesaid (to wit, as a clerk at Station F, a branch post-office of the United States in the said city of New York)

and by virtue of his said office and employment. Then the direction of the letter is given in the bill, as follows: "Mrs. Susan Metcalfe, No. 346 E. 24th st., New York City, N. Y."

And there is the further averment in the bill: "*And the same was then intended to be delivered by a letter carrier,* and had not then been delivered to the party to whom the same was directed."

The contention of the plaintiff in error is that, it being alleged in the third count that the stolen letter was intended to be delivered by a letter carrier, the Government was required to prove this fact in order to support the charge in this count, and that the failure of the Government to prove such fact on the trial was a variance between the averment in the indictment and the proof; and further, that the defendant in the court below, upon the evidence, was entitled to have the court direct the jury to acquit on the ground that a material averment to be proved by the Government was the fact that the letter described in the indictment, and from which it was alleged the contents were stolen by the defendant, "*was intended to be delivered by a letter carrier*," and that the testimony of the witnesses for the Government, Jacobs and Dillon, proved that the letter was not intended to be delivered by a letter carrier. The answer to this is that, in order to constitute the offense under the clause of section 5467 before cited, it was not necessary to aver in the indictment that the letter was intended to be delivered by a letter carrier.

The necessary elements of this offense are that a person employed in any department of the postal service shall

steal or take an article of value out of a letter which shall have come into his possession either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed. The letter in question bore the outward semblance of a genuine communication. It was placed in a regular depository for United States mail, namely, in Station F, a branch post-office of the United States in the city of New York. Hall was a person employed in a department of the postal service of the United States, namely, a clerk at this branch post-office. This letter came to him in the regular course of his official duty. It contained articles of value, to wit, one United States one-dollar Treasury note and three one-dollar United States silver certificates. When the letter thus came to his possession it was his duty as a faithful employee to pass it along in the ordinary way that it might reach the party to whom it was directed, and if such party could not be found, or the location indicated ascertained, the law provides for the disposition of the letter. But Hall did not undertake to do this. He broke open the letter and appropriated the contents to his own use. In other words, he stole it.

In this view of the case the averment in the indictment, "was intended to be delivered by letter carrier," is mere surplusage. Such an intent is not one of the ingredients or conditions of the statutory offense. It has no bearing on the defendant's acts, and it has no more connection with the offense described than any other private intention or private motive of the writer of the letter could have had. It is true that in some cases

unnecessary averments in regard to the description of the articles stolen have been held to constitute a fatal variance when the proof contradicted the particulars averred, because the particular description was a part of the identity of the article. But this principle has no application in this case, for the immaterial averment can not be said to be of that character. In the case of Montgomery *vs.* U. S., before cited, the indictment was very similar to this; in that case the averment in the third count of the indictment was that the letter was "*to be conveyed by mail and to be delivered to the person addressed.*" The proof showed that it was the intention of the Government officers who deposited the letter to withdraw it from the mails in case it was not stolen before it reached the person addressed. Upon this it was held that there was no variance, and the exception taken on the ground of a fatal variance was overruled. In U. S. *vs.* Wight, 38 Fed. Rep., 106, it is held that it is not necessary, in an indictment under the second clause of section 5467, R. S., for stealing the contents of a letter, to aver that the letter was intended to be conveyed by mail or mail carrier.

JAS. E. BOYD,
Assistant Attorney-General.

HALL *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 312. Argued November 29, 1897. — Decided January 3, 1898.

The defendant, who was employed as a postal clerk at station F in the city of New York, was indicted under Rev. Stat. § 5467. The indictment contained three counts; the first two under the first part of § 5467; the third count under the last clause of that section. The evidence showed that the Government detectives prepared a special delivery letter, designed as a test or decoy letter, containing marked bills, and delivered it, bearing a special delivery stamp, to the night clerk in charge of branch station F of the post office in this city. The defendant was not a letter carrier, but a clerk employed at that office, whose duty it was to take charge of special delivery letters, enter them in a book kept for that purpose and then place them in course of transmission. The letter in question was addressed to Mrs. Susan Metcalf, a fictitious person, 346 E. 24th street, New York city, fictitious number. The letter was placed by the night clerk with other letters upon the table where such letters were usually placed, and the defendant, entering the office not long after, took this letter, along with the others on the same table, removed them to his desk, and properly entered the other letters, but did not enter this letter. On leaving the office not long after, the omission to enter the letter having been observed, he was arrested, and the money contents of the letter, marked and identified by the officers, were found upon his person. The officers testified upon cross-examination that the address was a fictitious one; that the letter was designed as a test letter,

and that they did not intend that the letter should be delivered to Mrs. Susan Metcalf or to that address and that it could not be delivered to that person at that address. *Held*, that the evidence was sufficient to sustain a conviction under the third count of the indictment.

THE case is stated in the opinion.

Mr. Arthur C. Butts for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

MR. JUSTICE PECKHAM delivered the opinion of the court.

The defendant was indicted in the Circuit Court of the United States for the Southern District of New York in October, 1896, for embezzling and stealing a certain letter and its contents, described in the indictment, containing money. The indictment was under section 5467, Revised Statutes, which is set out in the margin.[1] The defendant was employed in a department of the postal service as a clerk at

[1] SEC. 5467. Any person employed in any department of the postal service who shall secrete, embezzle or destroy any letter, packet, bag or mail of letters entrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail carrier, mail messenger, route agent, letter carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post office or branch post office established by authority of the Postmaster General, and which shall contain any note, bond, draft, check, warrant, revenue stamp, postage stamp, stamped envelope, postal card, money order, certificate of stock or other pecuniary obligation or security of the Government, or of any officer or fiscal agent thereof, of any description whatever; any bank note, bank post bill, bill of exchange or note of assignment of stock in the funds; any letter of attorney for receiving annuities or dividends, selling stock in the funds, or collecting the interest thereof; any letter of credit, note, bond, warrant, draft, bill, promissory note, covenant, contract or agreement whatsoever, for or relating to the payment of money, or the delivery of any article of value, or the performance of any act, matter or thing; any receipt, release, acquittance or discharge of or from any debt, covenant or demand, or any part thereof; any copy of the record of any judgment or decree in any court of law or chancery, or any execution which may have issued thereon; any copy of any other record, or any other article of value, or writing representing the same; any such person who shall steal or take any of the things aforesaid out of

station F, a branch post office of the United States in the city of New York.

The indictment contained three counts. The first and second counts charged that the defendant wilfully embezzled, etc., the letter, which was intended to be delivered by a letter carrier. These counts were drawn with reference to the first clause in the statute above referred to. The third count is under the second clause of the statute, and alleged that the defendant, "being then and there employed in a department of the postal service of the United States, to wit, as clerk at station F, a branch post office of the United States, in the said city of New York, did unlawfully, wilfully and feloniously steal, take and carry away a certain United States Treasury note of the denomination and value of one dollar, and three silver certificates of the United States, each of the denomination and value of one dollar, the said treasury note and the said silver certificates then and there being the money and property of one Joseph E. Jacobs, and the same treasury note and the same silver certificates were then and there feloniously stolen and taken, as aforesaid, by the said William R. Hall from and out of a certain letter which then and there had come into his possession in his capacity as such clerk, as aforesaid, and by virtue of his said office and employment, and the said letter was directed in the tenor following — that is to say: 'Mrs. Susan Metcalf, No. 346 E. 24th St., New York City, N. Y.,' *and the same was then intended to be delivered by a letter carrier*, and had not then been delivered to the party to whom the same was directed," against, etc.

The defendant was arraigned, pleaded not guilty and was subsequently tried at a term of the United States Circuit Court for the Southern District of New York, and convicted and sentenced to imprisonment at hard labor in the Kings County penitentiary for the term of two years.

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any letter, packet, bag or mail of letters which shall have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punishable by imprisonment at hard labor for not less than one year nor more than five years.

Opinion of the Court.

Upon the trial, after the evidence had been given on the part of the prosecution and the Government had rested its case, the counsel for the defendant asked the court to direct the jury to acquit the defendant upon several grounds, (1) that the evidence failed to prove the crime charged in the indictment; (2) that a material allegation to be proved by the Government was the fact that the letter, described in the indictment and alleged to have been secreted, destroyed and embezzled and its contents stolen by the defendant, was intended to be delivered by a letter carrier, while the uncontradicted evidence showed that such letter was not intended to be delivered by a letter carrier, and therefore a material allegation in the indictment was not only not proved but was absolutely disproved; (3) that there was a fatal variance between the indictment and the proofs offered to sustain it by the Government, and the defendant should therefore be acquitted.

The motion to direct an acquittal was denied by the court and the defendant duly excepted. The defendant sued out a writ of error from this court to review the judgment of conviction, and the validity of the exception to the refusal of the court to direct the jury to acquit is the sole question now before us.

After his conviction the defendant moved in arrest of judgment and for a new trial. The judgment was arrested on the first two counts, and the motion for a new trial was denied. We take a statement of the facts proved upon the trial, from the opinion delivered by the learned judge in denying that motion, as we think the statement contains all that is material for the consideration of the case, and that it is a correct summary of the evidence in the particulars mentioned. It is as follows:

"The evidence showed that the Government detectives prepared a special delivery letter, designed as a test or decoy letter, containing marked bills and delivered it, bearing a special delivery stamp, to the night clerk in charge of branch station F of the post office in this city. The defendant was not a letter carrier, but a clerk employed at that office, whose duty it was to take charge of special delivery letters, enter

them in a book kept for that purpose, and then place them in course of transmission. The letter in question was addressed to Mrs. Susan Metcalf, a fictitious person, 346 E. 24th street, New York city, a fictitious number. The letter was placed by the night clerk with other letters upon the table where such letters were usually placed, and the defendant, entering the office not long after, took this letter, along with the others on the same table, removed them to his desk and properly entered the other letters, but did not enter this letter. On leaving the office not long after, the omission to enter the letter having been observed, he was arrested and the money contents of the letter, marked and identified by the officers, were found upon his person. The officers testified upon cross-examination that the address was a fictitious one; that the letter was designed as a test letter, and that they 'did not intend that the letter should be delivered to Mrs. Susan Metcalf or to that address,' and that 'it could not be delivered to that person at that address.'"

The question now before us is whether the evidence is sufficient to sustain this conviction under the third count of the indictment. We think it is. Section 5467, Revised Statutes, describes two distinct offences; the first clause of the section is directed against any person employed in any department of the postal service who secretes, embezzles, etc., any letter entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail or carried or delivered by any mail carrier, mail messenger, route agent, letter carrier or other person employed in any department of the postal service, or forwarded through or delivered from any post office or branch post-office established by the authority of the Postmaster General, and which shall contain any note, etc. This is one of the offences set forth in that section. The other offence set forth in the same section does not in terms provide that the letter must have been intended to have been conveyed by mail or carried or delivered by any mail carrier, letter carrier, etc., but it provides that "any such person," (meaning thereby any person employed in any department of the postal service as described in the first part of the section,)

"who shall steal or take any of the things aforesaid out of any letter, packet, bag or mail of letters which shall have come into his possession, either in the regular course of his official duties or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punishable by imprisonment at hard labor for not less than one year nor more than five years."

A test or "decoy" letter comes within the statute. *Goode* v. *United States*, 159 U. S. 663; *Montgomery* v. *United States*, 162 U. S. 410.

Although the section provides the same punishment for all the various acts set forth therein, yet the section itself clearly describes two different classes of offences. *United States* v. *Wight*, 38 Fed. Rep. 106. The proof would not show a violation of the first part of the section unless it appeared that the letter entrusted to the person employed in the postal service, or which came into his possession, was one which was intended to be conveyed by mail, or carried, or delivered, by a mail carrier, mail messenger, route agent, letter carrier or other person employed in any department of the postal service, or that it was forwarded through or delivered as stated in the section. Whether the proof here does not show that the letter in question was such a letter, it is not now necessary to say, because the judgment was arrested upon the first two counts covering that clause of the section. Although a motion in arrest of judgment cannot properly be made upon the ground that the evidence is insufficient to prove the case under the indictment, or under any particular count thereof, because such motion is confined to matters appearing upon the face of the record itself, 1 Archbold Cr. Pr. & Pl. (7 Am. ed.) 671 and notes, yet, as the motion was entertained and judgment was actually arrested upon the first two counts, those counts are not now in question.

The other clause of the section provides for a distinct offence, and under that it is not necessary to aver that the letter was intended to be conveyed by mail or delivered by a letter carrier, etc., as provided in the first clause, and it covers the case of any person employed in any department of the postal

service who steals or takes any of the things, already described in the section, out of any letter, etc., which shall have come into his possession either in the regular course of his official duties or in any other manner whatever, provided the same shall not have been delivered to the party to whom it is directed. We think this is entirely plain. *United States* v. *Wight, supra.*

We think the indictment must show under this clause — and this third count does show — that the letter, the contents of which were stolen by the person employed in the postal service, was one which had come in some way or manner under the jurisdiction and into the possession of the Post Office Department; for the statute does not refer to letters in regard to which that department has not and was not intended to have any concern or any duty to perform, such as letters which have not been deposited or left in any manner in any post office or street letter box, or given to a carrier or other agent of the department, and which remain entirely outside of that department, and where the stealing of such letters or their contents at that time is not of Federal cognizance. The evidence shows that this letter was within the possession and jurisdiction of the department, in the branch post office in New York, and that while undelivered to the party to whom it was addressed, its contents were stolen by defendant, who was a person in the postal service. Such stealing comes within the statute. That it was a test or decoy letter is immaterial, as already shown. If the letter be within the lawful possession of the Post Office Department, the stealing of the contents of such letter by a postal employé is a violation of the latter part of the section of the statute. This letter was thus within the jurisdiction and possession of the Department, and the defendant then stole its contents.

It is urged, however, that the conviction cannot be sustained under this third count because it contains, in addition to the particular allegations necessary to bring the act within the latter part of the section, an allegation that the letter, the contents of which were stolen, was intended to be delivered by a letter carrier. This fact forms no part of the offence men-

tioned in the second clause of the section in question, and it was therefore unnecessary to allege it. As the third count does contain such an averment, the counsel for the defendant argues that it became necessary to prove the fact thus averred, and, as it was (he argues) unproved, the defendant should have been acquitted by direction of the court. The result of such a holding would be to say that where an indictment contained all the necessary averments to constitute an offence created by the statute, if an averment wholly unnecessary and entirely immaterial be added, the prosecution must fail unless it prove such unnecessary averment, although proving every fact constituting the offence provided by the statute. We are of opinion that it was not incumbent upon the prosecution to prove this averment in order to sustain a conviction under this count.

Without this averment the third count contains every fact necessary to be proved in order to constitute an offence under the second clause of the statute, and the evidence in the case is sufficient to authorize the defendant's conviction upon that count. The character of the offence, as provided by statute, is not changed by this unnecessary averment, nor is the sufficiency of the evidence to sustain a conviction under the third count at all impaired if it be assumed that it did not show that the letter was intended to be delivered by a letter carrier. This is unlike a case where an unnecessary amount of description of an article to be identified by the description is contained in the indictment. Under those circumstances, it has been sometimes held that the description must be proved as laid, because it went to the identification of the article described. Nor is it like the case of an indictment for perjury or one for a libel where the sworn statement alleged to be false or the article alleged to be libellous must be proved substantially as averred in the indictment. In such cases the matter set forth constitutes the offence and must be proved accordingly. But here, every necessary fact is averred and proof sufficient to sustain a conviction has been given in regard to each fact. Because the pleader unnecessarily made an averment of a totally immaterial fact, the Government was

not therefore bound to prove it in order to sustain a conviction. For this reason there was no fatal variance between the offence set forth in the indictment and the proof. *Montgomery* v. *United States* and *Goode* v. *United States*, *supra*.

The judgment of conviction must be

Affirmed.